

BEFORE THE NATIONAL LABOR RELATIONS BOARD
UNITED STATES OF AMERICA
REGION 19

AKAL SECURITY, INC.

Employer

and

Case 19-UC-694

UNITED GOVERNMENT SECURITY OFFICERS
OF AMERICA, LOCAL #71

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:¹

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The Petitioner/Union is a labor organization within the meaning of the Act.

The Employer is a New Mexico Corporation engaged in the business of providing security services at facilities of the Federal Government, including two locations in Seattle, Washington. The first location is the federal courthouse located at 1010 5th Avenue, and the second is the bankruptcy court located at 1200 6th Avenue. The record reflects that the Employer obtained the contract to perform services at these two locations in October 2000. The previous contractor was United Investigative Services, which had held that contract for one year.

The record also disclosed that the Employer and the Petitioner are parties to a collective bargaining agreement effective by its terms for the period July 30, 2001, through September 30, 2002, covering the following unit at the two Seattle locations: "all full-time and shared position Federal Court Security Officers (CSOs) and Lead Federal

¹ A hearing opened in this matter, but was adjourned indefinitely after the taking of evidence on the timeliness issue.

Court Security Officers (LCSOs) employed by the Company in the 9th Circuit in the State of Washington, excluding all other employees including office clericals and professional employees as defined in the National Labor Relations Act.” This agreement also contains a provision whereby the parties acknowledge that the LCSOs will not perform supervisory duties as described by the National Labor Relations Act. The record shows that the duties of the LCSOs have not changed since the contract was executed.

The record establishes that the Employer has 12 employees working at the bankruptcy court building, all of whom work the same shift from 7:00 a.m. to 5:00 p.m. These employees consist of one LCSO and 11 CSOs. The work schedule at the federal courthouse is divided into three shifts. The first shift consists of two CSOs and one LCSO. It begins at 10:30 p.m. and ends at 7:00 a.m. The second shift consists of 20 CSOs and one LCSO, beginning at 7:00 a.m. and ending at 5:00 p.m. Finally, the Employer has a swing shift, which begins at 2:00 p.m. and ends at 10:30 p.m. That shift has one LCSO and two CSOs.

By the instant petition, Petitioner seeks to clarify the unit specifically to exclude the LCSOs on the grounds that they are statutory supervisors. Specifically, the Petitioner maintains that one of the four LCSOs, James Kenoyer, has been performing supervisory duties since before October 2000. Contrary to the Petitioner, the Employer contends that the LCSOs are not supervisory or management personnel, and considers them to be members of the bargaining unit.

The Act provides specifically for the exclusion of supervisors, and the Board when presented with an appropriate petition is required to exclude positions from a bargaining unit where the inclusion of those positions would violate the principles of the Act. Thus, in *Washington Post Co.*, 254 NLRB 168 (1981), a unit clarification case involving alleged supervisors, the Board directed processing of the petition. However, it did so only after expressly noting that the petition was timely since it was filed immediately following an election held in the disputed unit. The Board distinguished that case from those in which petitions were not timely filed. *Id.* at 169 and fn. 13. In *Wallace-Murray Corporation*, 192 NLRB 1090 (1971), the petitioner sought to clarify an existing unit to exclude guards during the midterm of the bargaining agreement. Noting that the bargaining unit was clearly defined in the agreement to include guards, the Board held that it would not serve the purposes of the Act to use the unit clarification procedure to modify a unit which is clearly defined in a current bargaining agreement, as it would be disruptive of a bargaining relationship. The Board dismissed the petition as untimely but without prejudice to filing a clarification petition at an appropriate time.

It is clearly not appropriate to process this petition in mid-term. As noted above, the Petitioner was fully aware at the time of the recent negotiations that Kenoyer was performing supervisory duties, and had been doing so since October 2000. It nevertheless chose to include the LCSOs in the current agreement. The Board has stated clearly that it will not allow a party to knowingly execute a contract and immediately petition for clarification, as it would undermine the collective-bargaining relationship. *Arthur Logan Memorial Hospital*, 231 NLRB 778 (1977) As noted in that case, a petition filed 90 days² prior to expiration of the agreement was processed by the Board in *Beth Israel Medical Center*. *Id.* at 779 fn. 4.

² In *Shop Rite Foods, Inc.*, 247 NLRB 883 (1980), the Board processed a unit clarification petition 101 days prior to the expiration of the then current 3-year contract.

Finally, the Board will find a petition timely after a contract's execution when the petitioning party reserved its right during the course of bargaining to file for clarification after a contract's execution. *Edison Sault Electric Co.*, 313 NLRB 753, 754 f. 2 (1994). It is not clear from the record what particular issues were discussed concerning the placement of LCSOs during their contract negotiations. However, the Petitioner has submitted no evidence or suggestion that it reserved its right during the course of bargaining to file this petition upon contract execution.

Inasmuch as the Petitioner entered into this current collective-bargaining agreement with the Employer knowing that James Kenoyer was performing the duties of a statutory supervisor, signed the agreement allowing Kenoyer and the other LCSOs to be members of the unit, and failed to prove that it reserved the right to file this petition prior to the conclusion of bargaining, I conclude that this petition is untimely. Accordingly, I shall dismiss this petition as untimely but without prejudice to filing a clarification petition at an appropriate time.

ORDER

IT IS HEREBY ORDERED that the petition filed in this matter be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by January 28th 2002..

DATED at Seattle, Washington, this 14th day of January, 2002.

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347-4050-0167